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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,329	12/07/2003	Daniel Bernard McKenna	013207.164C5US	2376
24283	7590	03/23/2006	EXAMINER	
PATTON BOGGS 1660 LINCOLN ST SUITE 2050 DENVER, CO 80264			DOAN, KIET M	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/730,329

Applicant(s)

MCKENNA ET AL.

Examiner

Kiet Doan

Art Unit

2683

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

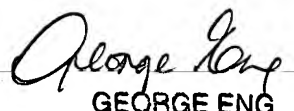
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 40-42, 46, 47, 52, 58, 59, 64-66, 70, 71, 76 and 77.  
Claim(s) objected to: 11, 24 and 37.  
Claim(s) rejected: 1-10, 12-23, 25-36, 38-39, 44, 48, 53- 56, 60, 67-68 and 72.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See office action.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
GEORGE ENG

SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: The newly amended claims 1, 14 and 27 did not contain all of the limitations of base(object) claims and details of intervening claims. The newly amended claims have change the scope and raise new issues that need further consideration and search.

### DETAILED ACTION

This office action is response to Amendment file on 02/17/2006.

Claims 45, 49-51, 57, 61-63, 69 and 73-75 are cancelled.

Claims 1, 14, 27, 46, 52, 58, 64, 70 and 76 are amended.

Examiner thanks Ellen Evonsprekelsen at 303-894-6163 for communicated regarding application. However, examiner found the independent **claims 1, 14 and 27** have been amended **but did not contain** including all of the limitations of base (object) claim and any intervening claims. In particular,

**Claim 1 must include** the limitation of object claim 11 and intervening claims 2, 8 and 9.

**Claim 14 must include** the limitation of object claim 24 and intervening claims 15, 21 and 22.

**Claim 27 must include** the limitation of object claim 37 and intervening claims 28, 34 and 35.

Examiner further acknowledged that applicant rep. had re-written six more independent claims 46, 52, 58, 64, 70 and 76 which contain all of the limitations of base (object) claim and any intervening claims. Therefore claims 46, 52, 58, 64, 70 and 76 are allowed.

Claims 59, 65-66, 71, 77 and 88 are allowed as being dependent on the independent claims 58, 64, 70 and 76.

Claims 40-42 are allowed as indicate in the previous final office action.

**The amendment after final file on 02/17/2006 not be entered**

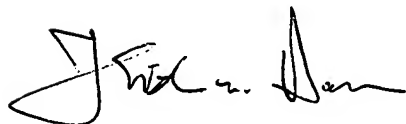
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiet Doan whose telephone number is 571-272-7863.

The examiner can normally be reached on 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kiet Doan  
Patent Examiner